

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE CITY OF NEW YORK and
THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiffs,
-against-
FEDEX GROUND PACKAGE SYSTEM, INC.,
Defendant.
-----X

No. 13-cv-9173 (ER)

PLAINTIFFS' PROPOSED SUPPLEMENTAL VOIR DIRE QUESTIONS

Plaintiffs the City of New York and the People of the State of New York respectfully submit the following additional proposed *voir dire* questions to supplement the Court's standard *voir dire* questions pursuant to Rule 47(a) of the Federal Rules of Civil Procedure.

STATEMENT OF THE CASE

In this case, Plaintiffs, the City of New York and the People of the State of New York, allege that from at least February 2006 through February 2015, Defendant FedEx Ground Package System, Inc. ("FedEx") knowingly partnered with multiple criminal cigarette trafficking businesses to illegally ship hundreds of thousands of cartons of cigarettes into New York State and New York City in violation of federal and state law and an earlier settlement agreement FedEx had entered into with the State of New York. Plaintiffs contend that these cigarette trafficking businesses were not licensed by the State or City of New York to sell cigarettes to New York customers. They profited by exploiting differences in cigarette tax rates across states and partnered with FedEx to ship cigarettes from states or Native American reservations where

cigarette prices were low, to individual consumers in states like New York where cigarette prices were high.

Plaintiffs further allege that Defendant violated its earlier settlement agreement with the State of New York by knowingly delivering cigarettes to individual consumers in New York in violation of state law. Plaintiffs also allege that Defendant failed to abide by its other obligations under that agreement, by, among other things: (i) failing to revise its internal policies to ensure that they were consistent with the agreement, (ii) failing to issue written communications to its sales staff, pickup and delivery employees and contractors informing them that FedEx was prohibited from delivering cigarettes to residences, (iii) failing to issue warnings to cigarette traffickers who were using FedEx to illegally ship cigarettes to individual consumers, and (iv) failing to terminate delivery services for such entities if they persisted after receiving a warning letter.

Defendant denies these allegations and maintains that it did not knowingly ship cigarettes to New York consumers or knowingly ship untaxed cigarettes into New York State and New York City.

VOIR DIRE

GENERAL QUESTIONS ABOUT THE CASE

1. Do you have any personal knowledge of the allegations as I have described them to you?
2. After hearing the statement of the case, do you have any strong views of the case that would make it difficult for you to follow my instructions?
3. Other than the short summary you just heard, have you read or heard anything about lawsuits regarding the illegal sales and transport of cigarettes resulting in the loss of taxes

for the City and State of New York? How did you feel about what you read/heard? Did you form an opinion about the case(s) or the parties involved?

4. Other than the short summary you just heard, have you read or heard anything about any lawsuits that have been filed against FedEx by the City of New York and the State of New York alleging that FedEx made illegal residential deliveries of “unstamped” cigarettes (*i.e.*, cigarettes that bear no evidence of payment of applicable state or local cigarette taxes) which resulted in unpaid taxes to the City and State of New York? How did you feel about what you read/heard? Did you form an opinion about the case or the parties involved?

5. Now, I am going to introduce you to the parties and their lawyers. As you have already heard, the Plaintiffs in this case are the City of New York and the People of the State of New York. The City is represented by the following attorneys from the Corporation Counsel of the City of New York, Zachary W. Carter: Eric Proshansky, Joshua Rubin, Krista Friedrich, and Hope Lu. The State is represented by the following attorneys from the Office of the New York Attorney General Barbara D. Underwood: Manisha M. Sheth, Brant Campbell, Paulina Stamatelos, Leslieann Cachola, and Samantha Liskow. The Defendant in this case is FedEx Ground Package System, Inc. or FedEx for short. FedEx is represented by the following attorneys from the firm of Wilkinson Walsh & Eskovitz, LLP: Beth A. Wilkinson, Brian L. Stekloff, Lori Alvino McGill, Jeremy S. Barber, and Paul Sampson. Do you know about any of the parties or their attorneys? Have you had any personal or business dealings with any of the parties or their attorneys? To your knowledge, have any of your close friends or relatives ever been employed by or had personal or business dealings with any of the parties, the attorneys, or the attorneys’ offices?

6. In addition to the attorneys that currently represent the parties, there are several attorneys who have previously represented the parties or who were involved with the case in some other capacity. For the City, these lawyers are Amy Okereke, Lilia Toson, and Tonya Jenerette. For the State, these lawyers are Sandra Pullman, Joshua Sprague, John Oleske, Christopher Leung, Laura Wood, Kathleen Konopka, and Joseph Kowalczyk. For FedEx, these lawyers are Koren Bell, Morgan Franz, Elizabeth C. Carter, Joel Cohen, Kenneth D. Sansom, Michele Lee Pahmer, Paula Allen, Arun Thomas, Michael Higginbotham, Aleshadye Getachew, Joseph Milcoff, and Ralia Polechronis. Do you know about any of these attorneys? Have you had any personal or business dealings with any of the attorneys? To your knowledge, have any of your close friends or relatives ever been employed by or had personal or business dealings with any of the attorneys, or the attorneys' offices?

7. I am now going to read a list of people who may be mentioned during the trial or who may be called as witnesses in the case. Please listen carefully to the list of names and raise your hand if you are acquainted with any of these people:

- | | |
|---|---|
| <input type="checkbox"/> Adare Whitt | <input type="checkbox"/> Grant Kuhn |
| <input type="checkbox"/> Andrew Lynn | <input type="checkbox"/> Heath Harlem |
| <input type="checkbox"/> Anthony Spalvieri | <input type="checkbox"/> Israel Chavez |
| <input type="checkbox"/> Brian Broderick | <input type="checkbox"/> Jacqueline Smith Onco |
| <input type="checkbox"/> Carl Nappi | <input type="checkbox"/> James Dolin |
| <input type="checkbox"/> Christopher Gallant | <input type="checkbox"/> Janet Mullins |
| <input type="checkbox"/> Christopher Lannon | <input type="checkbox"/> Jeffrey Bollinger |
| <input type="checkbox"/> Christopher Nichols | <input type="checkbox"/> Jeffrey Lerman |
| <input type="checkbox"/> Dana Biberman | <input type="checkbox"/> Jeffrie Ann Crook f/k/a Ann Tagert |
| <input type="checkbox"/> Daniel Skelley | <input type="checkbox"/> John Costanza |
| <input type="checkbox"/> David Nocenti | <input type="checkbox"/> John Maddux |
| <input type="checkbox"/> Dawn McCarrell | <input type="checkbox"/> Jonathan Smith |
| <input type="checkbox"/> Deborah Schmidt f/k/a Deborah Adamson | <input type="checkbox"/> Joseph Collins |
| <input type="checkbox"/> Dolores Bruner-Uebelhoer f/k/a Dolores Uebelhoer | <input type="checkbox"/> Katherine Venturi f/k/a Katherine Van Geffen |
| <input type="checkbox"/> Earl "Danny" Fow | <input type="checkbox"/> Kevin Fow |
| <input type="checkbox"/> Edward Morawski | <input type="checkbox"/> Kevin Koken |
| | <input type="checkbox"/> Kim Evans |

- ☐ Kristin “Nikki” Martin
- ☐ Lance Gumbs
- ☐ Laura B. Stamm
- ☐ Mabel Cufee
- ☐ Mark Bitzer
- ☐ Mark Scanlon
- ☐ Mary Adkins
- ☐ Mary Burriss
- ☐ Matthew Myers
- ☐ Matthew Myerson
- ☐ Michael Liguori
- ☐ Michael Moore
- ☐ Patrick Fleenor
- ☐ Peter Persampieri
- ☐ Peter Spitzer
- ☐ Robert Boetto

- ☐ Raychel Favalaro
- ☐ Rebecca Williams
- ☐ Renee Thomas
- ☐ Richard Ernst
- ☐ Rick Hartt
- ☐ Samantha Harrison f/k/a Samantha Moore
- ☐ Scott Drenkard
- ☐ Scott Stryer
- ☐ Sonia Angell
- ☐ Teresa Knight
- ☐ Tracy Gatten
- ☐ Vincent Esposito
- ☐ Vincent Lesnak
- ☐ Virginia Richardson

8. I am now going to read a list of business entities that may be mentioned during the trial. Please listen carefully to the list and raise your hand if you, or any of your close friends or relatives, have ever sought employment with, been employed by, or had any personal or professional dealings with any of these entities:

- ☐ Cigarettes Direct to You (CD2U)
- ☐ Danny’s Tobacco
- ☐ FOW Enterprises
- ☐ Native Made Tobacco
- ☐ Shinnecock Indian Outpost

- ☐ Shinnecock Smoke Shop
- ☐ Two Pine Enterprises
- ☐ Your Kentucky Tobacco Resource LLC
- ☐ Kentucky Smokes

9. Is there any reason at all, whether it concerns something we have mentioned or not, why any of you feel that you could not be fair and impartial jurors in this case?

INTERACTIONS WITH DELIVERY SERVICES COMPANIES

10. Have you or has any member of your immediate family ever worked for a delivery services company such as FedEx, UPS or DHL, either for home deliveries or business deliveries?

11. Are you, a family member, or a close friend currently employed by FedEx

Corporation, any of its subsidiaries or affiliates (*i.e.*, FedEx Ground Package System, Inc., FedEx Office (formally known as FedEx Kinkos), FedEx Freight, etc.), or as a contractor for FedEx or any of its subsidiaries? Have you, a family member, or a close friend been employed by FedEx within the last ten years?

12. Have you or has any member of your immediate family ever worked for a business that had an account or business relationship with FedEx Corporation or any of its subsidiaries or affiliates?

SMOKING/CIGARETTE TAXES

13. Do you have any background, training, or experience in the cigarette and/or tobacco industry?

14. Do you currently smoke cigarettes or have you smoked cigarettes within the last ten years? How long have you/did you smoke? From where do you/did you buy cigarettes? If you quit smoking, why did you quit?

15. Do you currently use tobacco products other than cigarettes or have you used other tobacco products within the last ten years? Other tobacco products include but are not limited to: electronic cigarettes (or e-cigarettes), vapes, cigars, hookah, pipe tobacco, roll-your-own tobacco, chewing tobacco, snuff, dissolvables, and nicotine gels. How long have you/did you use other tobacco products? From where do you/did you buy these tobacco products? If you quit using these tobacco products, why did you quit?

16. Do you have any strong thoughts or opinions toward people that smoke?

17. Has a family member or close friend had any smoking-related illness or died from cigarette smoking?

18. Are you involved in or participate in part of any groups or organizations that

support healthy living and/or prevention of certain diseases? Have you donated money or participated in charity events to raise money for such diseases or other health-related causes?

19. Do you have any negative opinions about cigarette prices in New York or the taxes imposed on cigarettes sold in New York?

20. Do you have any negative opinions about New York State and New York City's decisions related to tobacco and cigarette taxes and/or prices, including the decision to tax cigarettes at a high rate?

21. Do any of you feel that New York State and New York City's decisions to impose higher taxes on cigarettes was made only for the purpose of increasing tax revenue to the City and State?

22. Do you have any negative opinions of New York's anti-smoking laws and regulations? Do any of you feel that New York's smoking bans are excessive?

23. Are you involved in or participate in any groups or organizations that lobby for smokers' rights (i.e., NYC C.L.A.S.H (NYC Citizens Lobbying Against Smoker Harassment), Citizens for Tobacco Rights, etc.)?

24. Have you, a family member, or close friend ever written or called a representative or assembly member to express your views on tobacco taxes and/or smoking related legislation?

GENERAL TAXES

25. Are you part of any groups or organizations that revolve around taxpayer advocacy (i.e., Americans for Tax Reform)?

26. Do you have any background, training, or experience in tax law and / or tax reform?

27. How many of you feel that taxes in general in New York are excessive? Do you think you would have difficulty viewing the evidence impartially knowing that the Plaintiffs are responsible for enforcing New York's tax law?

28. How many of you feel like the State and local governments improperly use / spend taxpayer money? Tell me more about how you have come to feel that way?

EMPLOYMENT BACKGROUND QUESTIONS

29. Do you work for or have you ever worked for a large corporation?

30. Do you currently own or have you ever owned your own business?

31. Are you or have you ever been employed as an independent contractor?

32. Have you ever worked in sales?

33. Have you ever held a position as an "account manager" or any other position that required you to maintain relationships with business clients and manage the interests of a particular client?

34. Do you hold or have you ever held a managerial/leadership position in which you oversaw a number of employees / departments at the company? If yes, what is/was the position? How many employees do/did you oversee?

35. Have you ever held a position in which you were responsible for establishing and/or enforcing certain rules and regulations to comply with legal requirements?

36. Have you ever held a position that required you to be aware of certain regulatory/compliance laws or regulations?

37. Have you ever worked for a company or organization where your position required you to adhere to strict corporate policies or guidelines?

38. Have you ever received any anti-trafficking/anti-bootlegging/anti-smuggling

training through your job?

INTERACTON WITH GOVERNMENT AND LAW ENFORCEMENT

39. Have you, a close friend, or a family member ever sought employment with, or been employed by the City of New York or the State of New York (i.e., Department of Education, Department of Finance, Department of Buildings, Department of Correction, Police and/or Fire Department, etc.)? For those of you who have been employed by the City or State of New York how would you rate your experience (i.e. positive, negative, neutral)?

40. Have you ever had any negative experiences dealing with any law enforcement or government agencies, including any New York City or New York State agency?

41. Have you, one of your family member, or one of your close friends ever sued a government or law enforcement agency? Have you ever been in a position where you could have sued a government or law enforcement agency but decided against it?

42. Have you, a family member, or close friend ever sued the City of New York or the State? Have you ever been in a position where you could have sued the City or State but decided against it?

43. Have you, a family member or close friend ever been questioned or investigated by the Office of the Attorney General or any other government or law enforcement agency?

44. Do you have any particular thoughts or opinions about cases in which the City or State brings a lawsuit against an independent corporation or organization?

45. Would you have difficulty believing the testimony of someone who has been convicted of a criminal offense, regardless of the nature of that offense?

LITIGATION GENERALLY

46. How many of you think there are too many lawsuits? How many of you feel that

monetary damages awarded in lawsuits are often excessive?

Dated: New York, NY
September 10, 2018

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